STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 97-319

December 3, 1997

PUBLIC UTILITIES COMMISSION
Proposed Amendment of Chapter 280 to Achieve Parity with Interstate Access Rates by May 30, 1999

ORDER ADOPTING RULE AND STATEMENT OF FACTUAL AND POLICY BASIS

WELCH, Chairman; NUGENT AND HUNT, Commissioners

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INTRODUCTION

The Commission adopts this rule to achieve intrastate access rate levels in Maine that will be less than or equal to then-current interstate levels by May 30, 1999, as required by 35-A M.R.S.A. § 7101-B. This rule is adopted pursuant to 35-A M.R.S.A. §§ 104, 111, 301, 1301, 2102, 2105, 2110, 7101, 7101-B, 7104-A and 7303.

Currently, New England Telephone & Telegraph Company d/b/a NYNEX, now known as Bell Atlantic - Maine (Bell Atlantic) charges an average access rate of about 20 cents per minute for intrastate calls.[1] The per-minute average interstate access rate, for the total of both originating and terminating access, currently averages about $0.07 cents per minute. That rate is expected to decrease further in the next few years as the Federal Communications Commission (FCC) implements its access reform policies.

While we will adopt these revisions to § 8 of this Rule, we are aware that there are other sections that require changes. We will propose revising and updating other sections of this Rule (such as §§ 5 and 6) shortly.

II. BACKGROUND

35-A M.R.S.A. § 7101-B was enacted by the Legislature during the last legislative session and became effective on September 19, 1997. Section 7101-B requires that we establish, by May 30, 1999, intrastate access rates that are less than or equal to the interstate access rates that are established by the FCC, notwithstanding any other provisions of law. By January 1, 1998, we are required to report to the Legislature's Joint Standing Committee on Utilities and Energy on our progress in achieving parity with interstate access rates.

III. PROPOSED RULE

On June 10, 1997, we issued a Notice of Rulemaking/Notice of Inquiry proposing amendments to Chapter 280 to achieve parity

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[1] Currently Bell Atlantic serves as access charge administrator. Under Chapter 280, §8(B), all local exchange companies (LECs) in Maine must concur in Bell Atlantic's access rates.

with interstate access rates by May 30, 1999.[2] The rule proposed a number of changes as described below.

A. Parity with Interstate Access Rates Required

In our proposed revision to Chapter 280, we set forth a process, including reporting and filing requirements, to lower intrastate access rates to levels that are equal to or less than then-current interstate access rates by May 30, 1999.[3]

Under the proposed rule, intrastate access rates would be reduced, by May 30, 1998, by at least 40% of the reduction projected as necessary to achieve parity with interstate access rates by May 30, 1999.[4] The 1999 reduction would be any

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[2] In a separate Inquiry phase of this proceeding, we offered all interested persons an opportunity to negotiate a resolution of the numerous issues raised by the impact of access rate reductions. On November 7, 1997, a group of stakeholders (the Commission Staff, State Planning Office, State Department of Administration and Financial Services, State Department of Education, Public Advocate, and Bell Atlantic) filed a stipulation addressing certain issues raised by the inquiry. Because the Commission must decide whether to adopt this rule before December 23, 1997, we will adopt this Order and Rule prior to determining whether we will accept or reject the stipulation.

[3] In Docket No. 96-526 (Order dated June 10, 1997), the Commission amended Chapter 280 to reduce the originating intrastate access rate by 20%. On July 31, 1997, we issued an Order Approving Compliance Filing regarding Bell Atlantic's rates for access services. Bell Atlantic had filed, on July 30, 1997, its tariff for Access Service, § 30.5.1. In our July 31, 1997 Order, we found that the Company's tariff complied with the requirements of Chapter 280, § 8 (K).

[4] Assuming an average federal access rate of about 7 cents per minute, access rates in Maine would decline from an average of about 20 cents per minute to about 14.8 cents per minute in May, 1998, which is 40% of the difference between the current average access rate of about 20 cents per minute and a federal access rate of about 7 cents per minute. Assuming an average federal access rate of about 5.3 cents per minute, access rates in Maine would decline from an average of about 20 cents per minute to about 14.1 cents per minute in May, 1998, which is 40% of the

additional amount necessary to achieve parity with then-current interstate access rates before May 30, 1999.[5]

We have proposed amendments to Chapter 280 that would add provisions to the rule that are consistent with the statutory amendment and that would phase-out the provisions of Chapter 280 that will be made obsolete by 35-A M.R.S.A. § 7101-B.

B. Structure of Access Rates

In the Notice of Rulemaking, we proposed that the local exchange companies must structure their intrastate access rates in the same way as the federal structure for access rates billed to interexchange carriers. We proposed this policy for three reasons. First, we found that substantial differences between Maine's structure and the interstate structure can no longer be sustained. Second, it is more difficult to ensure compliance with this Rule if intrastate access charges are structured differently from the federal charges. Finally, we agree with the principle that non-traffic sensitive charges should be recovered, to the extent possible, through flat charges to carriers, we saw no reason to depart, prospectively, from the federal structure recently announced by the FCC.[6] *See Federal Communications Commission, In the Matter of Access Charge Reform,* CC Docket No. 96-262, *Price Cap Performance Review for Local Exchange Carriers,* CC Docket No. 94-1*, Transport Rate Structure and Pricing*, CC

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difference between the current average access rate of about 20 cents per minute and a federal access rate of about 5.3 cents per minute.

[5] On May 30, 1999, the access rate in Maine would decline from about 14.8 cents per minute to about 7 cents per minute, assuming that the access rate for federally-regulated interstate calls remains about 7 cents per minute. The federal access rate for interstate calls is, however, expected to decrease further in the next several years. Thus, the May 30, 1999 access rate reduction may include an additional increment that would reduce the federal access rate from about 7 cents per minute to the then-current federal access rate.

[6] In a recent Chapter 280 rulemaking in Docket No. 96-526, we had proposed, but did not adopt, a similar flat-rate structure, based on revenues rather than access lines.

Docket No. 91-213, *End User Common Line Charges*, CC Docket No. 95-72, First Report and Order Adopted: May 8, 1997.

C. Changes to the Existing Section 8

In our Notice of Rulemaking, we proposed to eliminate several substantive subject areas (subsections F, I and J) presently contained in Section 8 on the effective date of this proposed Rule. Several other sections (subsections A-E, F, I and J) would expire on May 30, 1999.

We proposed to eliminate the entire subject matters of present subsections F, I and J immediately for reasons unrelated to the enactment of 35-A M.R.S.A. § 7101-B. We have proposed to eliminate the leakage access charge (Subsection F) because it never went into effect; it would be difficult to enforce; and the leakage problem (customers avoiding toll charges by effectively making all calls local through the use of private lines) has been significantly diminished by special contracts for large customers. We proposed to eliminate subsections I and J because these subsections have never been used and are overly complex.

Our proposal to eliminate the entire subject matters of present subsections A-E, G, H and K, effective May 30, 1999, is based on the requirements of 35-A M.R.S.A. § 7101-B and because of our proposal that the intrastate access rate structure in Maine would mirror the federal interstate access rate structure. Therefore, these subsections would no longer be needed.

IV. ANALYSIS OF COMMENTS RECEIVED ON PROPOSED AMENDMENTS

In our Notice of Rulemaking/Notice of Inquiry dated June 10, 1997, we asked interested persons to provide comments, by August 25, 1997, on the proposed amendments and four sets of specific questions. We did not schedule a public hearing on the proposed rule but we afforded interested parties an opportunity to request a hearing. The Commission received no requests for a hearing. We received written comments from AT&T Communications of New England (AT&T), Bell Atlantic-Maine (Bell Atlantic), Maine Department of Education/Maine State Library (Education/Library), MCI Telecommunications Corporation (MCI), the Public Advocate, and Telephone Association of Maine (TAM).

TAM commented generally that the Commission should establish a timetable for implementing the intrastate access rate

reductions, and a process for determining the necessary corresponding actions to offset the impacts on independent telephone companies, to assure that the issues are addressed and resolved in a coordinated, orderly and timely matter. TAM notes that if the Commission does not implement Section 7101-B properly, the rigid requirements and lack of clarity of the new statute could result in the need for large basic rate increases. If not handled properly, the ability of local exchange companies to continue their operations in Maine and provide universal service to rural customers could be severely harmed. Thus, TAM states that the Commission should adopt a rule that will satisfy the constraints of the statute yet preserve the public interest by maintaining an atmosphere under which quality universal services can continue to be provided under reasonable rates.

Education/Library made the general comment that this proceeding (including the Inquiry portion of this docket) and our Universal Service Inquiry (Docket No. 97-429) are so interrelated that the issues in one docket cannot be addressed without addressing the issues in the other and that some forum should be provided to discuss how proceedings on these dockets can be coordinated. In addition, Education/Library discusses the disposition of amounts under the Commission's Order in Docket No. 94-123 that were allocated to schools and libraries funds that have not been spent.

In its Comments, Bell Atlantic notes that it was vigorously exploring the possibility of stipulating a resolution of the issues raised by the Inquiry portion of this docket. If a settlement could be reached, Bell Atlantic stated that it will submit for the Commission's consideration the Company's specific proposal on how any required access reductions can best be achieved.

Both Education/Library and TAM raise the issue of coordinating our access rule with our interrelated universal service proceedings, e.g., our USF Inquiry (Docket No. 97-429) and our schools and libraries proceeding (Docket No. 96-900). We agree that this proceeding is closely related to numerous other proceedings, especially those related to preserving universal service. The amended rule as proposed sets forth the framework for achieving parity with then-current interstate access rates in Maine by May 30, 1999. This will allow us to achieve these access rate reductions in a timely and manageable way.

We will also address the universal service issues, including those concerns raised by Education/Library and TAM, in a timely way but we recognize that there are numerous uncertainties at the federal level that have important implications to Maine. We will continue our state-level universal service proceedings, but final actions in these proceedings are inextricably linked to federal universal service activities. While we will seek resolution of these issues in as timely a manner as reasonably possible, we cannot delay the adoption of this access rate parity rule.

We are open to exploring ways to accommodate the specific concerns of local exchange companies and other parties. Thus, while we will set forth a clear and understandable framework for achieving parity by May 30, 1999 in this Order and Amended Rule, we will consider requests for waivers of this rule so long as the request for waiver sets forth a timely, predictable, and reasonable plan for achieving access rate parity by May 30, 1999. This date of course, is set by statute and cannot be waived. We note further that we would be extremely reluctant to delay all further reductions to May 30, 1999, but we are willing to consider appropriate alternatives to the timing set forth in our Rule.

The questions and responses of the Commenters to our four sets of specific questions are set forth below:

1) At what pace should the reductions in access rates, which must be completed by May 30, 1999, be phased in during the period July 1, 1997 to May 30, 1999?

AT&T emphasizes that reductions in access rates to forward looking economic cost should be phased in as quickly as possible. AT&T would prefer that 60% of the reduction be effective on May 30, 1998.

MCI supports evenly splitting the required access rate reductions over the 2-year period because it would provide greater consumer benefits earlier and would help to stabilize rate changes.

The Public Advocate states that the Commission’s proposal to require 40% of the required reduction by May 30, 1998 and the balance by May 30, 1999, is appropriate. A more gradual decrease

would cause greater administrative costs and more customer confusion.

TAM states that the pace of reductions in access rates cannot be considered in isolation from the pace of corresponding increases in basic rates and implementation of measures such as a state USF support mechanism or state SLC. TAM notes that the Commission has recognized the need to deal with these issues in a comprehensive and timely manner with regard to Bell Atlantic. TAM requests that the Commission establish a timetable for independent telephone companies that allows for the resolution of the rate and state USF issues before the impact of access rate reductions are imposed on the independent telephone companies. TAM would welcome the opportunity to prepare a plan, for the Commission's consideration, to address these issues for independent telephone companies.

We will require that the minimum required access rate reduction shall be at least 40% of the reduction necessary to achieve parity with interstate access rates by May 30, 1998 and that the 1999 reduction shall be any additional amount necessary to achieve parity with then-current interstate access rates by May 30, 1999.

We are not persuaded by the comments of AT&T and MCI that we should require a more rapid reduction in access rates. First, we have already reduced originating intrastate access rates in Maine by 20 percent in a separate proceeding.[7] Thus, we have already made significant progress in achieving parity with interstate access rates. Second, while we must achieve access rate parity in an orderly and predictable way, we are well aware of the numerous uncertainties surrounding universal service and other important issues. To better accommodate these uncertainties, we require a minimum 40/60 split between 1998 and 1999. While we will require a minimum access rate reduction of 40 percent in 1998, we encourage local exchange companies to voluntarily decrease access rates further in 1998.

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[7] MCI's Comments assumed that the applicable average intrastate access rate was 26 cents per minute. It currently is about 20 cents per minute.

As we noted in our response to the parties' general comments, we are open to considering waivers to our rule if a party presents an appropriate alternative.[8]

2) To what extent should the timing of the phase-in and the level of intrastate access rate reductions be synchronized with receipt by the local exchange companies of potentially increased federal Universal Service Fund (USF) support payments (received pursuant to the requirements of Section 254 (b) of the federal Telecommunications Act of 1996)?

AT&T supports the position of the FCC, as outlined in the FCC's May 8, 1997 Universal Service Order that it would be premature to substitute explicit federal service support for implicit intrastate universal service support before states have completed their own universal service reforms through which they will identify the support implicit in existing intrastate rates and make that support explicit. FCC Order No. 97-157, CC Docket No. 96-45, paragraph 271.

MCI argues that the federal universal services are required to be competitively neutral in terms of both contributions and reimbursements and that to use the universal service funds to maintain the purported revenue requirement of the incumbent local carrier is in violation of both the letter and spirit of the federal Telecommunications Act of 1996.

The Public Advocate supports the timing of access rate reductions to coincide with increased federal universal service fund (USF) support if that were possible. The Public Advocate argues that the short time frame allowed by 35-A M.R.S.A. §7101-B and the uncertainties associated with the prospective level of federal USF support does not make that possible.

TAM states that there is no reason to conclude at this time that rural telephone companies in Maine can expect to receive increased federal USF support payments in the next few years.

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[8] Waivers may also be appropriate to coordinate the transition by independent local exchange companies (LECs) from intrastate settlements to access charges based on their own revenue requirements, to coordinate the transition with independent LEC local rate adjustments, and/or to implement an intrastate universal service fund.

Indeed, TAM states that the timing and extent of intrastate access rate reductions will hasten the need for a state universal service program. TAM states that the Commission will have to address this issue soon.

We agree with the Public Advocate that numerous uncertainties remain, on both the federal and state levels, regarding the timing and level of interstate access rate reductions and possible changes in federal USF support payments. We agree with TAM that Maine may not receive increased high-cost support in a new plan. We will continue to be involved in federal proceedings and we will be open to considering alternative approaches if significant developments occur.

3) Should the rule require each independent telephone company to file individual access rates? Should they be required to enter into a mandatory pool with Bell Atlantic, a voluntary pool with Bell Atlantic, or a voluntary pool with each other?

MCI argues that each of the independent telephone companies should file separate access tariffs based on the cost standards consistent with its form of regulation.

The Public Advocate recommends that the Commission apply this rule to the independent telephone companies (independents) in the same way that the rule will be applied to Bell Atlantic. If, however, the independents and Bell Atlantic arrive at a voluntary settlements pool agreement with Bell Atlantic or with each other, the Public Advocate would not object to such an arrangement, provided that the pool does not cause significant cross-subsidies.

TAM states that there will be a “tremendous” shift of revenues from toll/access to basic local rates for rural LECs if they use the NECA interstate rates for intrastate access. Accordingly, TAM supports the pooling concept as a means for averaging access rates.

Section 8(B), which is not changed in this rulemaking, requires that other LECs concur in Bell Atlantic’s access rates. The independent LECs may, of course, request a waiver from that provision if, for any reason, they desire to file individual,

nonconcurring rates. We recognize the potential benefits of the pooling concept but will not order that approach in this rule.[9]

4) If "mirroring" of interstate access rates produces substantially lower revenues for a high-cost independent telephone company, how should these issues be coordinated with the development of a state universal service fund?

AT&T would support coordinating the determination of the need for, and the development of, a competitively neutral state universal service fund with the reduction of access with respect to independent telephone companies, but not for Bell Atlantic.

MCI argues that any USF mechanisms that the Commission chooses to establish pursuant to its authority should still conform to the Federal Communications Act of 1996. Thus, the state USF mechanisms must be "specific, predictable, and sufficient mechanisms ... that do not rely on or burden federal universal service support mechanisms." Telecommunications Act of 1996, Publ. L. No. 104-104, § 191(a), 100 Stat. 56 (1996) (codified at 47 U.S.C. §254(f)(1996)).

The Public Advocate supports coordinating this proceeding with the state USF proceeding but would not recommend a slower implementation of the proposed rule because any delay will also delay the beginning of meaningful competition in Maine's intraLATA market.

TAM emphasizes that achieving parity with interstate access rates must be coordinated with the development of a universal service fund, the resolution of necessary increases in local exchange rates, the possible adoption of a flat Subscriber Line Charge (SLC) in Maine, and the resolution of the consequences of the effort by Bell Atlantic to terminate the settlements process in Maine. TAM requests that the Commission assign advocacy staff to facilitate the development of such a plan.

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[9] The independent LECs in Maine may wish to voluntarily pool at the federal level and in doing so could mirror those pooled rates at the state level.

We agree with the commenters that we should coordinate this rule with our universal service proceedings as well as other Commission activities. While we will not assign advocacy staff to discuss these issues with TAM members, we encourage our advisory staff to meet with TAM and other interested parties in appropriate forums to discuss the development of a process to achieve and coordinate an appropriate resolution to the interrelated issues set forth by TAM. We will not decide at this time whether to assign advocacy staff. We note, however, that we may lack sufficient resources to do so at this time given the many proceedings that we are undertaking, often under tight timetables, in the electric, gas, telephone and water industries.

TAM made three additional comments. We summarize and respond to these comments below.

1) TAM notes that if intrastate access rates are set individually by company, rather than on a pooled basis in which companies concur, and rate levels must equal the then-current interstate levels, it would be administratively least burdensome for carriers and the Commission simply to allow carriers to cross-reference, where appropriate, their interstate tariffs for intrastate purposes. If the exact structure and terms and conditions of interstate tariffs are mirrored but not the rate levels, carriers should be allowed to cross-reference all sections but the rate sections; thus, in this case only the rate section of access filings within Maine would need to be specified.

While this approach seems reasonable, we need not resolve this issue in this Order. This issue can be resolved in future compliance proceedings.

2) TAM notes that there are basic differences in the structure of access rates in Maine and the interstate access rate plan. TAM states that an accurate assessment of an individual LEC’s effective interstate access rates should take into account the full interstate recovery components including any changing USF expense adjustment and weighted dial equipment minutes (DEM) weighting. TAM states that the state plan should include similar parallel components.

We agree that there are a number of technical and structural issues that will have to be evaluated in order to properly mirror the structure and level of federal interstate access rates. Because the structure and specific design of access rates is likely to evolve over the next several years, we set forth the basic framework of appropriate reductions in Maine-jurisdictional access rates in this Order and Rule and leave the technical details to compliance proceedings in 1998 and 1999.

3) TAM notes that the FCC's access restructure proceeding has, to date, focused on issues affecting interstate price cap carriers. As a result, the rural LECs in Maine are unable to forecast how the federal access rate proceeding will affect them. TAM states that the Commission should not order or expect the smaller LECs to commit to intrastate changes prior to a full opportunity to review, analyze and understand the impact of a future interstate access rate restructuring.

We are aware that there are numerous uncertainties and will carefully consider alternative approaches, on request.

V. CONCLUSION AND ORDERING PARAGRAPHS

We therefore will adopt the amendments to Chapter 280 as proposed on June 10, 1999.

Accordingly, we

O R D E R

1. That the attached Chapter 280, Provision of Competitive Telecommunications Services, is hereby approved and effective five days after acceptance of filing by the Secretary of State.

2. That the Administrative Director send copies of this Order Adopting Rule and Statement of Factual and Policy Basis and the attached rule to:

A. All telephone utilities in the State, excluding operators of customer-owned coin-operated (or coinless) pay telephones (COCOTs).

B. All persons on the Commission's subscriber list who have requested notice of rulemakings.

C. All persons who have filed comments in Docket No. 97-319.

D. The Bureau of Corporations, Elections and Commissions in the office of the Secretary of State; and

E. The Executive Director of the Legislative Council (20 copies).

F. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5).

Dated at Augusta, this 3rd day of December 1997.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Hunt